



WISCONSIN REGULATORY DIGEST

A Publication of the PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

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Tax Delinquency, A New Basis for Denial, Suspension and Revocation

Since 1996, the law has required the department to verify that applicants for credential renewal are not delinquent in payment of Wisconsin state taxes. The department is required to deny renewal if the Department of Revenue certifies that an applicant is tax delinquent.

Effective January 1, 1999, the scope of the law will expand to apply to other state agencies, including the Department of Transportation and the Department of Natural Resources. The law will also change to include applicants for new licenses and current credential holders. After January 1, 1999, the Department of Regulation and Licensing is required to deny the applications for an initial credential if the applicant is certified by the

Department of Revenue as being liable for delinquent state taxes. The Department will also be required to revoke the credential of current holders who are tax delinquent.

A person denied or revoked because of a tax delinquency status may request the Department of Revenue to review the certificate of tax delinquency at a hearing.

The text of the new law is in 1997 Wisconsin Act 237 at section 307 and sections 532-551. Act 237 is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Administrative Warnings May be Issued Under New Law

Examining boards, the department and other regulatory authorities are authorized to issue administrative warnings under new law, 1997 Wisconsin Act 139, effective May 5, 1998. An administrative warning may be issued to close an investigation if a regulatory authority determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the warning adequately protects the public.

THE WISCONSIN PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

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Under the new law, an administrative warning puts the professional on notice that if the misconduct is repeated, the incident that was the basis for the warning can be used to prove that the person warned knew the conduct was prohibited. A warning is not discipline and may be issued without a formal complaint or a hearing. The contents of the warning shall be private and confidential.

A credential holder may have a warning reviewed before the department or board that issued the warning. The law requires the department to promulgate rules establishing uniform procedures for administrative warnings. The text of 1997 Wisconsin Act 139 is available from the department and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Computer-based TOEFL

Beginning in July, the Test of English as a Foreign Language, TOEFL, will be administered on computer in North and South America, Europe, the Middle East, Africa, Australia and New Zealand, and in eight areas in Asia: Brunei, Indonesia, Nepal, Malaysia, Mongolia, the Philippines, Singapore, and Sri Lanka. Many locations will have permanent testing sites, including colleges and universities, ETS field offices, TOEFL representatives, Fulbright and binational commissions, and Sylvan Technology Centers. In some areas or regions where testing volumes are low or would not support permanent test centers, computer-based testing will be served by mobile testing centers. Until the computer-based TOEFL is introduced in the remaining Asian countries, the paper-based test will continue to be administered in those countries. The TOEFL program pledged to continue to do what is necessary to make the test available to ALL individuals regardless of country or area of residence.

A special computer-based testing, CBT, tutorial designed specifically for nonnative speakers of English has been developed to teach the minimal skills needed to take the TOEFL on computer. This tutorial appears before each administration of the computer-based TOEFL. According to Educational Testing Service, research has shown that after administering the tutorial and adjusting for language ability, there was no evidence of adverse effects on performance on the computer-based TOEFL due to lack of prior computer experience. This tutorial and 67 sample questions have been put into a CD-ROM format. The "TOEFL Sampler" is available free from the TOEFL program and is downloadable from our Web site (www.toefl.org).

The testing fee of the computer-based TOEFL will be \$100 in the United States and Canada and \$125 in all other countries. The Finance Committee of the

TOEFL Policy Council is studying possible ways - including offering partial fee waivers/vouchers - to assist examinees who would find the testing fees beyond their means.

Increase to Physical Therapy Candidate Examination Fee

On April 20, 1998, the Board of Directors for the Federation of State Boards of Physical Therapy passed a motion to increase the candidate fee for the National Physical Therapy Examination from \$185.00 to \$285.00. The fee increase will be effective for all examinations administered on or after July 1, 2000.

The Board of Directors believe that such an increase is critical to ensuring the continued financial health of the Federation in light of members' needs and the financial challenges of the future. They stated that the fee increase will enable the Federation to continue and enhance current projects and initiate new programs. Of paramount importance are improvements in the national licensure examinations to better protect the public against incompetent practitioners. These improvements would better reflect what is critical to competent practice through enhanced stimuli (e.g. color photos and x-rays) as well as the investigation of simulations.

Access to Health Care Records

Wisconsin statute 146.83 concerning access to health care records has been amended by 1997 Wisconsin Act 157 to require that health care providers release records directly to a patient's health care provider upon request and with a statement of informed consent. The law also prohibits concealing or withholding health care records from a patient's health care provider or to prevent or obstruct an investigation or prosecution. Violations of the statute as amended still include actual damages and exemplary damages along with injunctive relief. Act 157 was effective in April 1998. Copies of the Act are available from the department or via Internet at www.state.wi.us under "legislature."

Law Sanctions Professionals With Delinquent Support

In April 1998, legislation was enacted which provides for suspension of credentials for failure to pay family support or for failure to comply with a subpoena or warrant related to paternity support proceedings. The determination of failure to pay family support or failure to comply with a warrant or subpoena will be made by county support agencies or the Department of Workforce Development.

The Department of Workforce Development, after proper notice and provision for hearing, will certify to the Department of Regulation and Licensing that a

professional who holds a credential issued by the department, or who is applying for a credential is delinquent in support or has failed to comply with a subpoena or warrant. The department then shall restrict, limit or suspend a credential or deny an application for an initial credential or for renewal of a credential. The credentials will remain restricted, limited or suspended until the department receives notification of release from the Department of Workforce Development. However, credentials shall not be sanctioned for more than five years if instituted because of delinquency in support, or for more than six months if instituted for failure to comply with a subpoena or warrant. 1997 Wisconsin Act 191 became effective in April 1998.

The text of 1997 Wisconsin Act 191 is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Department to Collect Social Security Numbers

The new family support collection act requires the Department of Regulation and Licensing to collect social security numbers from all individuals who apply for new credentials. Applications from individuals who do not submit their social security number will be denied. The social security numbers collected may be disclosed only to the Department of Workforce Development for the purpose of enforcing the Family Support Collection Act, or to the Department of Revenue for the purpose of checking for tax delinquencies.

Complaints Against Licensees

Complaints are processed in the following manner:

All complaints received by the Physical Therapists Credentialing Board and the Department are routed to the Division of Enforcement (DOE) where they are logged into the computer and given a number.

Complaints are screened by several board members and the supervisor of the DOE prosecutors and the supervisor of the DOE investigators. The complaint screening process results in a decision to open or not open a complaint for investigation. Sometimes additional information is requested of the complainant at this stage of the process. Most boards are now moving toward screening complaints at least once a month.

If a complaint is opened for investigation, it is assigned to a team in DOE. Teams consist of prosecutors, investigators, legal assistants and, in some cases, auditors. A specific prosecutor and investigator is assigned to the case and the investigator commences an investigation as soon as possible. The investigation generally includes

corresponding with the complainant, the credential holder and other people with relevant information. Documents are reviewed and the investigator often interviews people to obtain more information.

A board member is assigned to the case as an advisor. The board member offers suggestions to the investigator and, after the investigation is concluded, the advisor recommends that the case be closed for a certain specified reason or that the case proceed to possible disciplinary action.

If the case advisor recommends possible disciplinary action, a prosecutor reviews the file and requests additional investigation, if needed. The prosecutor usually offers the credential holder an opportunity to agree to a resolution of the matter. The offer may be in the form of a written stipulation for some type of discipline, such as a revocation, suspension, limitation, reprimand, and/or an assessment of all or part of the costs of the investigation and prosecution. If the credential holder rejects the stipulation, the attorney schedules a hearing before an administrative law judge. The hearing is like a trial and the credential holder may have an attorney represent him or her. After the hearing, the administrative law judge prepares a proposed decision and refers it to the Board.

If a case advisor recommends that a case be closed, the case is reviewed by the Board at its next meeting and the Board either concurs or refers the case for disciplinary action. Stipulations and proposed decisions are also referred to the Board for final disciplinary action. If the Board disagrees with a proposed stipulation, the Board may refer the case back to the prosecutor for more negotiations or, possibly, a hearing. If the Board disagrees with a proposed decision of an administrative law judge, it may change parts of the proposed decision, but it will have to explain why it is making the change.

There is considerable due process built into the complaint process. Credential holders or their attorneys are given many opportunities to respond to proposals and to object to decisions. Ultimately, if a credential holder disagrees with the Board's disciplinary decision, the credential holder may appeal the case to the Circuit Court.

Letters are sent to complainants and credential holders at various stages in the process, informing them of receipt of a complaint and the final disposition of a complaint.

Department of Regulation and Licensing
Physical Therapists Affiliated Credentialing Board
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Madison, WI 53708-8935

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Credential Holder

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Fax Number

(608) 261-7083

Digest on Web Site

The December 1997 digest is on the Web.

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>

Send comments to dorl@mail.state.wi.us

Wisconsin Statutes and Code

Copies of the Physical Therapists Affiliated
Credentialing Board Statutes and Administrative
Code can be ordered from the Department. Include
your name, address, county and a check payable to
the Department of Regulation and Licensing in the
amount of \$5.28. The latest edition is dated June,
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